



County of Los Angeles CHIEF EXECUTIVE OFFICE

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July 12, 2013

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From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE - REPORT ON COUNTY ADVOCACY EFFORTS RELATED TO THE IMPLEMENTATION OF AB 109 LEGISLATION

Executive Summary

This memorandum is to provide the Board a report on County advocacy efforts on legislation related to AB 109 (Chapter 15, Statutes of 2011), and provide an update on County-interest AB 109-related legislation introduced in the first year of the 2013-14 Legislative Session.

Overview

Since implementation of AB 109 in October 2011, a number of concerns have been raised by the Board and other local government leaders over the impact of the legislation, which shifted responsibility for the supervision and incarceration of certain offenders from the State to counties. The primary concerns include how eligibility criteria is defined, the lack of consideration of individuals' previous criminal history for release to county Post-Release Community Supervision, as well as issues surrounding the release of seriously mentally ill offenders.

As a result of these concerns, this office recommended a number of policies which were approved by the Board and added to the County's State Legislative Agenda over the past two years. These policies relate to Mentally Disordered Offenders (MDOs) and consideration of an individual's past serious, violent or sex offenses in determining eligibility for county Post-Release Community Supervision upon release from State prison.

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Legislative Outlook

As previously reported, since the enactment of the 2011 Public Safety Realignment, the Brown Administration has been reluctant to consider measures that would alter provisions of AB 109 and shift a potentially sizable population of offenders back to State supervision. Legislative proposals suggesting major changes to the realignment structure have previously been considered a reversal of the intent of the legislation and, as a result, the Administration has not been receptive to such amendments.

During the current Legislative Session, a myriad of bills have been introduced to alter various aspects of AB 109. To date, however, most of these measures have failed to pass out of policy committee and/or have become two-year bills. The Legislative Leadership has consistently indicated that significant changes to AB 109 would reverse the progress made under the 2011 Public Safety Realignment and, as a result, it is not expected that many of these measures will move forward.

Federal Three-Judge Panel Court Order

It is important to also note that on June 20, 2013, the Federal three-judge panel overseeing litigation against the State related to overcrowding within the State prison system issued a court order for the early release of an estimated 9,500 State prison inmates by December 2013. The court has also indicated that any attempts by the Legislature and/or the Administration to implement new measures that would potentially increase the State prison population would be a violation of the court order and would be met with judicial action. The court's recent actions make it more difficult for the Administration and the Legislature to consider passage of AB 109-related legislation.

AB 109 Eligibility Criteria

Under existing law, AB 109 clearly defines the specific criteria for offenders released from State prison to county Post-Release Community Supervision (PRCS) and stipulates that to be eligible for PRCS, prison inmates must not be serving a current sentence for:

- Serious or violent offenses such as murder, rape, assault with a deadly weapon, robbery, or carjacking and other offenses as defined by Penal Code sections 1192.7 (serious) and 667.5 (violent).
- Crimes that require an offender to register as a sex offender under Penal Code Section 290 or are classified as a High Risk Sex Offender.

As previously reported, of the fundamental problems identified by the Board and other criminal justice stakeholders is that an inmate's previous criminal history status is not considered in the eligibility assessment for county PRCS. However, it is important to note that the applicable Penal Code Sections for serious, violent and sex offenses were developed for sentencing and sentencing enhancement purposes and were not designed to necessarily define a serious, violent or sex offense, as it is interpreted under AB 109 legislation.

Therefore, any significant changes to the current PRCS eligibility criteria that would include a consideration of previous criminal history or use an alternative definition of serious and violent offenses would likely result in a shift of a significant number of offenders currently coming to counties under PRCS back to State supervision, which, as noted above, neither the Administration nor the Legislature has been inclined to consider.

County-Advocacy Legislation

This office and the Sacramento advocates have continued to actively pursue legislation to address the concerns identified by the Board related to MDOs and eligibility for county PRCS supervision. The most current efforts include the following:

County-sponsored AB 1065 (Holden), which as introduced on February 22, 2013, would require that a person released from State prison who has served a previous prison term for which he or she was certified as a Mentally Disordered Offender be subject to parole supervision. AB 1065 failed passage in the Assembly Public Safety Committee by a vote of 3 to 0, but was granted reconsideration. The Sacramento advocates will be pursuing this measure in 2014.

Concurrently with efforts on **County-sponsored AB 1065**, this office and the Sacramento advocates have been involved in discussions with the Brown Administration related to other potential MDO legislative solutions. The Administration has acknowledged that there are issues surrounding the de-certification of MDOs who are subsequently released to PRCS with limited notice and information.

As a result of these discussions, budget trailer bill language was introduced by the Administration in the 2013-14 May Budget Revision that stipulated that de-certified MDOs would remain under State supervision; however, the language was not included in the FY 2013-14 State Budget package signed by the Governor on June 27, 2013. The Sacramento advocates have continued to engage in discussions with the Administration and there is the possibility of pursuing the MDO trailer bill language when the Legislature reconvenes from their Summer Recess in mid-August.

Each Supervisor
July 12, 2013
Page 4

County-supported SB 287 (Walters), which as introduced on April 1, 2013, would require any person released from State prison who has a prior conviction for a serious or violent felony, a crime for which the person received a third strike, or a crime that resulted in the person being classified as a High Risk Sex Offender or was a Mentally Disordered Offender to be placed on parole supervision. SB 287 failed passage in the Senate Public Safety Committee on April 23, 2013 but was granted reconsideration. This measure is a two-year bill and will be considered in 2014.

Legislation of County Interest Related to AB 109

Attached is an overview and the current status of AB 109-related legislation of County interest introduced during the first year of the Legislative Session.

Next Steps

This office and the Sacramento advocates will continue to work with the Administration and the Legislative Leadership to pursue legislation to address the MDO issue and find a solution that is workable for the County. We will also continue to pursue passage of AB 1065 and SB 287 when both measures are considered in 2014. Furthermore, this office and the Sacramento advocates will support additional efforts by the Legislature to further clarify the definition of non-serious, non-violent offenders and to include consideration of an offender's previous criminal history and convictions in eligibility assessments for county PRCS.

Pursuant to the Board's motion on June 18, 2013, this office is working with the Countywide Criminal Justice Coordination Committee (CCJCC) along with appropriate County departments to educate the Legislature and the Los Angeles Legislative Delegation on outcomes and issues the County has faced with the implementation of AB 109. We will also work with CCJCC, the Public Safety Realignment Team, and other criminal justice stakeholders to identify legislative strategies and proposals to address other pressing challenges related to AB 109.

We will continue to keep you advised.

WTF:RA
MR:KA:ma

Attachment

c: All Department Heads
Legislative Strategist

Legislation of County Interest Related to AB 109

Custody and Alternatives to Custody

AB 624 (Mitchell), which as amended on June 19, 2013, would authorize a sheriff to award program credit reductions for successful completion of rehabilitative programming, including academic programs, vocational programs, vocational training, substance abuse programs, and core programs such as anger management and social life skills and provides that credit reductions may be for one to six weeks. AB 624 is currently pending on the Senate Floor.

AB 752 (Jones-Sawyer), which as introduced on February 21, 2013, would authorize a person sentenced to county jail for a felony to participate in a work furlough program. AB 752 passed the Legislature and was signed by the Governor on July 3, 2013.

SB 188 (Liu), which as amended on April 8, 2013, would authorize the establishment of a conservation camp in a county to be operated by the sheriff or as an entity separate from the county jail administered by a superintendent and would authorize a county sheriff to utilize inmates assigned to county conservation camps in performing fire prevention, fire suppression and control, and other work as may be assigned by the sheriff. SB 188 was held in the Senate Appropriations Committee.

Post-Release Community Supervision and Parole

AB 15 (Bradford), which as introduced on December 3, 2012, would require the State Department of Corrections and Rehabilitation, not less than 45 days prior to the release of an inmate to parole or Post-Release Community Supervision (PRCS), or as soon as practicable, to notify the local law enforcement agency of the jurisdiction to which the inmate is to be released. AB 15 is a two-year bill.

AB 63 (Patterson), which as amended on April 1, 2013, would provide that the unauthorized removal of an electronic, global positioning system (GPS), or other monitoring device affixed as a condition of Post-Release Community Supervision, parole or mandatory supervision is an offense punishable by imprisonment in county jail for not more than one year, or in State prison for 16 months, two years, or three years. AB 63 failed in the Assembly Public Safety Committee and reconsideration was granted.

AB 723 (Quirk), which as introduced on February 21, 2013, would allow a person on PRCS who has a revocation petition filed against him or her to file an application for bail with the superior court and would provide that bail pending revocation of PRCS is a matter within the sole discretion of the court. AB 723 is scheduled for hearing in the Senate Appropriations Committee on August 12, 2013.

AB 884 (Bonilla), which as amended on May 15, 2013, would allow a county board of parole to release a prisoner on county parole pursuant to existing law for a term not to exceed three years instead of two years. AB 884 is currently pending on the Senate Floor.

AB 986 (Bradford), which as amended on May 15, 2013, would permit flash incarceration of persons on PRCS in a city jail pursuant to existing law governing the imposition of flash incarceration. AB 986 is currently pending on the Senate Floor.

AB 1238 (Weber), which as amended on April 25, 2013, would require the State Department of Corrections and Rehabilitation to establish up to five reentry work training programs for parolees between 18 and 24 years of age to assist in community reintegration upon discharge from prison. AB 1238 was held in the Assembly Appropriations Committee.

SB 57 (Lieu and Rubio), which as amended on May 7, 2013, would prohibit a person who is required to register as a sex offender and who is subject to parole supervision from removing an electronic, GPS, or other monitoring device and provide that the first and second violation of this provision would result in 180-day and 365-day incarceration, respectively. The bill would further provide that the third and subsequent violations would result in 16 months, 2 years or three years in State prison. SB 57 is currently pending on the Assembly Floor.

SB 710 (Nielsen), which as introduced on February 22, 2013, would require all offenders released from prison on and after January 1, 2014, to be subject to parole supervision for a minimum period of three years. SB 710 failed in the Senate Public Safety Committee and reconsideration was granted.

Sentencing

AB 222 (Cooley), which as introduced on February 4, 2013, would require a sentence be served in State prison if the defendant is convicted of a crime for which an enhancement is imposed with respect to a substance containing heroin, cocaine base, cocaine, methamphetamine, amphetamine, or phencyclidine and its analogs, if the substance exceeds a specified weight. AB 222 failed in the Assembly Public Safety Committee and reconsideration was granted.

AB 560 (Ammiano), which as amended on March 21, 2013, would allow a court to recall a sentence upon the court's own motion or the recommendation of the sheriff and require a court to suspend execution of the concluding portion of a sentence in county jail pursuant to Penal Code Section 1170 (h) as amended by AB 109 of 2011 for at least six months, during which time the person would be subject to mandatory supervision. AB 560 was held in the Assembly Appropriations Committee.

AB 828 (Holden), which as introduced on February 21, 2013, would require any person convicted of violations related to the sale, manufacture or transport of certain controlled substances to be punished by imprisonment in a State prison not a county jail. AB 828 is a two-year bill.

SB 225 (Emmerson), which as amended on April 1, 2013, would require a sentence to be served in State prison when the defendant is convicted of a felony otherwise punishable in a county jail and is sentenced to more than three years. SB 225 is a two-year bill.

SB 226 (Emmerson), which as introduced on February 11, 2013, would require a court, upon conviction of a defendant for offenses involving force or serious bodily injury that is punishable as a felony by imprisonment in a county jail, if the court has reason to believe the defendant has a severe mental disorder, to transport the defendant to the Department of Corrections and Rehabilitation for evaluation as a Mentally Disordered Offender. SB failed in the Senate Public Safety Committee and reconsideration was granted.

SB 706 (Correa), which as introduced on February 22, 2013, would require an individual released from a county jail after serving a sentence for a felony to be placed on Community Reintegration and Transitional Status for a period of 12 months and would make the individual subject to search or seizure by a peace officer at any time with or without a warrant, and with or without cause. SB 706 failed in the Senate.

SB 708 (Nielsen), which as introduced on February 22, 2013, would require a sentence to be served in State prison when the defendant is convicted of a felony and has three or more prior felony convictions. SB 708 failed in the Senate Public Safety Committee and reconsideration was granted.

Sex Offenders

AB 2 (Morrell), which as introduced on December 3, 2012, would provide that any criminal defendant who is released on parole or to PRCS who has suffered a prior or current felony requiring registration as a sex offender, and who violates that parole or PRCS by violating the requirement to register as a sex offender, shall serve any period of incarceration for the violation in State prison. AB 2 is a two-year bill.

AB 605 (Linder), which as introduced on February 20, 2013, would provide that any criminal defendant who is released on parole or to PRCS, who has suffered a prior or current felony requiring registration as a sex offender, and who violates that parole or PRCS shall serve any period of incarceration for the violation in State prison. AB 605 failed in the Assembly Public Safety Committee and reconsideration was granted.

AB 1334 (Conway), which as amended on April 9, 2013, would require any person who is required to register as a sex offender be subject to parole supervision by the State Department of Corrections and Rehabilitation (CDCR) and would also require that a person released from State prison who has a prior conviction or juvenile adjudication

for which the person is required to register as a sex offender be subject to parole supervision by CDCR. AB 1334 failed in the Assembly Public Safety Committee and reconsideration was granted.

Other AB 109 Related Legislation

AB 601 (Eggman), which as amended on April 1, 2013, would authorize a court to revoke parole and return the person to state prison for a specified period and would require the Legislative Analyst's Office to produce a report, to be delivered to the Assembly, the Senate, and the Governor's office, evaluating the criminal justice realignment, specifically with regard to offenders under State supervision. AB 601 is two-year bill.

AB 1050 (Dickinson), which as amended on July 1, 2013, would require the Board of State and Community Corrections to develop definitions of specified key terms in order to facilitate consistency in local data collection, evaluation, and implementation of evidence-based programs related to community corrections. AB 1050 is scheduled for hearing in the Senate Appropriations Committee on August 12, 2013.

SB 144 (Cannella), which as amended on April 22, 2013, would require the State Controller to transfer \$819.8 billion from the State General Fund to the Realignment Reinvestment Fund for FY 2013-14 and would, beginning in FY 2014-15 require the State Controller to transfer an amount equal to the estimate of net current fiscal year savings resulting from the 2011 Public Safety Realignment legislation. The bill would require the State Controller to annually allocate the money for deposit in the county's Realignment Reinvestment Services Account, based on the average daily population of realigned offenders under each county's supervision for the preceding fiscal year. SB 144 failed in the Senate.

SB 199 (De León), which as introduced on February 7, 2013, would add a rank-and-file deputy sheriff or a rank-and-file police officer, and a rank-and-file probation officer or a deputy probation officer, each to be appointed by a local labor organization, to the membership of a Community Corrections Partnership. The bill would require the vote of the rank-and-file deputy sheriff or rank-and-file police officer, and the rank-and-file probation officer or a deputy probation officer, on the local plan. SB 199 is a two-year bill.